

JUL 28 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES ANTHONY GREENE,

Plaintiff - Appellant,

v.

COMMISSIONER OF THE SOCIAL
SECURITY ADMINISTRATION,

Defendant - Appellee.

No. 04-15460

D.C. No. CV-03-05404-DLB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Dennis L. Beck, Magistrate Judge^{**}, Presiding

Submitted July 24, 2006^{***}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Charles Anthony Greene appeals pro se from the district court's order reversing the administrative law judge's ("ALJ") decision to deny disability

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This case was assigned, with the consent of the parties, to a Magistrate Judge, pursuant to 28 U.S.C. § 636(c)(1).

^{***} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

benefits and remanding for further proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's decision to remand for further proceedings. *Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000). We affirm.

Greene contends the district court abused its discretion by remanding for further proceedings, instead of for an immediate award of benefits. We disagree. The ALJ's decision contains ambiguity regarding Greene's non-exertional restrictions and the advice of a vocational expert could aid in the resolution of the case. The district court therefore did not abuse its discretion in granting the government's motion to remand. *See Benecke v. Barnhart*, 379 F.3d 587, 593 (9th Cir. 2004) (remand for further proceedings appropriate where enhancement of the record would be useful); *Harman*, 211 F.3d at 1178.

Greene's contention that he was improperly denied a jury trial is unavailing. *See* 42 U.S.C. § 405(g) ("The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner.").

We do not consider Greene's contentions raised for the first time in his reply brief. *See Eberle v. City of Anaheim*, 901 F.2d 814, 818 (9th Cir. 1990).

We recommend, but do not require, that the district court on remand appoint counsel with experience in social security disability matters for Greene.

AFFIRMED.